

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DALLAS H. HULL)	
Claimant)	
VS.)	
)	Docket No. 214,407
MAGILL TRUCK LINES, INC.)	
Respondent)	
AND)	
)	
TRAVELERS INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appeals from a preliminary hearing Order of Administrative Law Judge John D. Clark dated February 20, 1997, wherein Judge Clark denied claimant's request for benefits.

ISSUES

Claimant, in his appeal, lists only compensability as being at issue in this matter. A review of the briefs of both claimant and respondent indicates that timely notice, just cause, written claim, and whether claimant suffered accidental injury arising out of and in the course of his employment have all been raised as issues before the Administrative Law Judge.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds that the denial of benefits in this matter should be affirmed.

A brief history of this case is necessary in order to understand not only the issues but also the end result.

Claimant was a truck driver for respondent, Magill Truck Lines, for many years. He alleged that sometime in early August 1994, approximately between August 4 and August 8, he suffered an injury to his neck and upper back while strapping down a load. Claimant indicated he had a "crink or jam" in his neck at that time and it had bothered him immediately. He advised that he called his dispatcher but was told they did not have anyone else to cover the load so he was required to drive the load to Denver. While claimant alleges he advised the dispatcher that he was hurt he concedes he did not tell the dispatcher that his injury was related to work.

Claimant began seeking medical treatment but at no time provided the respondent with an indication that this medical treatment was for a work-related condition. The bills provided from this treatment were turned over to claimant's health care provider rather than being submitted to workers compensation. Claimant advised at least two separate treating physicians that he had suffered a problem but that there was no known trauma associated with these symptoms. Claimant continued working for respondent through December 28, 1995, at no time advising respondent that he had suffered a work-related accident even though he alleged aggravation through his last day worked. Sometime in January 1996 claimant did fill out an accident report and submitted it to respondent claiming an August 8, 1994, date of accident stemming from the slip and wrenching of his neck and back.

The first known notice to respondent that claimant was alleging a work-related accident was the accident report prepared sometime in January 1996. Written claim was specifically submitted to respondent on July 10, 1996.

This matter was initially found compensable by Administrative Law Judge John D. Clark in an Order of September 10, 1996. An appeal was taken to the Workers Compensation Appeals Board which reversed Judge Clark on November 8, 1996, finding that claimant had failed to prove notice to respondent as required by K.S.A. 44-520.

The Appeals Board went on to state that "since 'just cause' is not alleged, we do not need to address it herein. Also, we do not reach the second issue concerning whether claimant's injury arose out of and in the course of his employment with respondent."

This matter was again before Judge Clark on February 20, 1997, at which time claimant presented no additional evidence but instead argued the Board's failure to consider whether just cause was satisfied is sufficient grounds to grant an additional appeal to the Appeals Board. Judge Clark in his February 20, 1997, Order denied claimant's request for benefits.

At this time it is not clear whether the Appeals Board is to consider whether claimant had just cause for not notifying respondent of his accident within ten days, whether claimant has failed to provide written claim pursuant K.S.A. 44-520a, whether claimant has failed to carry his burden of proving accidental injury arising out of and in the course of his employment pursuant to K.S.A. 44-501, or all three. The parties fortunately have agreed that the preliminary hearing transcript, dated September 10, 1996, can be considered by the Appeals Board for purpose of this appeal. As such, the Appeals Board finds it appropriate for preliminary hearing purposes to decide the issues that have to this point been presented to Judge Clark including just cause, written claim, and accidental injury arising out of and in the course of employment.

K.S.A. 44-501 grants compensation when a worker suffers personal injury by accident arising out of and in the course of the employee's employment. In this instance, claimant is alleging an accident date of approximately August 8, 1994, with aggravation continuing thereafter. In the numerous medical documents attached to the preliminary hearing of September 10, 1996, there are entries discussing claimant's accident which show no history of trauma as documented in a medical report of August 13, 1994, from Dr. R. W. Meador; medical which indicates claimant "denies any trauma" contained in the Pratt Internal Medicine Group, P.A., note of October 6, 1995; a December 13, 1995, medical note of Dr. Merwin B. Moore, III, indicating claimant "does not recall any history of specific trauma"; and an Employer's Report of Accident prepared sometime in January 1996 indicating an accident date of August 8, 1994, when claimant slipped and wrenched his neck and back while strapping down his load. In workers compensation litigation it is claimant's burden to prove entitlement to an award of compensation by proving the various conditions upon which claimant's right depends by a preponderance of the credible evidence. See K.S.A. 44-501 and K.S.A. 44-508(g). It is difficult to accept claimant's allegation of a specific and immediate onset of pain on August 8, 1994, or at anytime in August 1994 when claimant later could not recall the specifics of this incident while discussing his ongoing symptomatology with various medical providers in this case. The Appeals Board finds for purpose of preliminary hearing that claimant has failed to prove accidental injury arising out of and in the course of his employment with respondent on the date or dates alleged.

The Appeals Board next considers whether claimant satisfied the requirements of K.S.A. 44-520 in proving just cause for failing to notify the respondent of an accident within ten days of the date of accident. The Appeals Board earlier found that claimant failed to provide notice of an accident for either the August 1994 alleged date or the December 28, 1995, last date worked. The Appeals Board must determine whether there was just cause for claimant's failure to advise respondent of the accident in question. The only evidence provided at the second preliminary hearing of February 20, 1997, was a portion of the respondent's employer handbook which admonishes workers to report all on-the-job injuries within 24 hours. It goes on to require a complete description of the accident including where the accident occurred, when the accident occurred including both time and date, how the accident occurred, the type of injury suffered, and what doctor or hospital

provided treatment. Claimant alludes to a possible notice to his dispatcher but admits that he may not have advised the dispatcher that this was a work-related injury. No additional notice was provided to respondent until the accident report was prepared in January 1996. Whichever accident date is used, it seems apparent claimant was aware or should have been aware that the immediate report of work-related accidents was part of his employment responsibility with respondent. As such, the Appeals Board finds claimant has failed to provide just cause for his failure to notify respondent of an accident within ten days of either August 8, 1994, or December 28, 1995.

The Appeals Board must next consider whether claimant provided written claim pursuant to the requirements of K.S.A. 44-520a. In workers compensation matters claimant must provide written claim within 200 days of the date of accident. If the respondent fails to file an accident report as required by K.S.A. 44-557 within 28 days after receipt of knowledge of an injury this time limit can be extended to one year.

The medical evidence fails to justify claimant's allegation that his accidental injury occurred through his last date worked, December 28, 1995. The medical reports indicate a specific onset in August 1994 and these reports are supported by claimant's accident report filed in January 1996 alleging an August 1994 date of accident. Regardless of whether the 200-day or one-year time limit is used by the Appeals Board claimant has failed to provide written claim to respondent within the time limits required under K.S.A. 44-520a from an August 8, 1994, date of accident.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated February 20, 1997, denying claimant's request for benefits should be, and is hereby, affirmed for the reasons above stated.

IT IS SO ORDERED.

Dated this ____ day of April 1997.

BOARD MEMBER

c: Lawrence M. Gurney, Wichita, KS
William L. Townsley, III, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director